IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5088 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMITA VIKAS NAIKNAVARE - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PR ABICHANDANI for Applicant(s) : 1,
Mr. MR Mengdey, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2007
ORAL JUDGMENT

Rule. Shri MR Mengdey, learned APP on behalf of the State and Shri Devang Nanavati, learned advocate on behalf of opponent No.2 waive service of Rule.

2. By way of this application under Section 482 of the Code of Criminal Procedure original-accused No.3 of Criminal Case No. 25780/2006 has prayed for an appropriate direction for quashing and setting aside the Complaint No. 58/2004 - Inquiry Case No. 45/2005 subsequently numbered as Criminal Case No. 25780/2006 filed by the respondent No.2 herein pending in the Court of learned Judicial Magistrate (FC), 1st Court at Surat.

3. A criminal complaint has been filed by the respondent No.2 herein, original-complainant in the Court of learned JMFC, 1st Court at Surat against Naiknavare Associates Promoters & Builders Pvt. Ltd and others for the offences under Section 138 and 141 of The Negotiable Instruments Act read with Section 406, 420, 114, 120(B) of the Indian Penal Code and applicant is original-accused No.3 in the said complaint. It is alleged in the complaint that accused No.1 is a Registered Private Limited Company; accused No.

2 to 6 are Directors thereof; the company has given a cheque No. 296720 dated 4.4.2004 amounting to Rs. 11,50,000 drawn in favour of the complainant company; and the said cheque was signed by accused No.4 as Authorised Signatory of accused No.1 Company. It is alleged in the complaint that when the said cheque was deposited with their bankers the same has been returned with an endorsement “Funds Insufficient”. It is submitted in the complaint that thereafter a statutory notice was sent and inspite of that payment has not been made and therefore the petitioner and other accused have committed offence under Section 138 read with Section 141 of The Negotiable Instruments Act [hereinafter referred to as 'the Act']. The learned Trial Court has issued summons for the offences punishable under Section 138 read with 141 of the Act against the petitioner and other accused. Being aggrieved and dissatisfied with the same the petitioner here, original-accused No.3 has preferred the present application under Section

482 of the Code of Criminal Procedure to quash and the complaint.

4. Shri Abichandani, learned advocate appearing on behalf of the petitioner has submitted that at the time when the alleged offence has been committed the petitioner was not even Director of the original-accused No.1 Company and that she has already resigned as Director much prior to the alleged offence more particularly on 21.1.1992. He has produced on record the Form No. 32 issued by the Registrar of Companies in support of his submission that the petitioner has already resigned as Director of the accused No.1 Company since 21.1.1992. Therefore it is submitted that when the petitioner was not the Director at the relevant time when the cheque was presented on 7.6.2004 the complaint against the petitioner is required to be quashed and set aside for the offences under Section 138 read with 141 of the Act.

5. Shri Devang Nanavati, learned advocate appearing on behalf of respondent No.2, original-complainant is not in position to satisfy how the accused No.3 is liable for the offence under Section 138 of the Act for the cheque in question. He has also not disputed the Form No. 32 annexed with the petition suggesting that the petitioner has resigned as Director of the accused No.1 company on 21.1.1992. Under the circumstances when the petitioner herein, original-accused No.3 has resigned as Director as far back as on 21.1.1992 and when the cheque dated 4.4.2004 in question was presented on 7.6.2004 the petitioner was not even the Director of the accused No.1 Company it cannot be said that the petitioner has committed any offence under Section 138 read with Sec. 141 of the Act. Under the circumstances, the complaint against the petitioner for the offences under Section 138 read with Sec. 141 of the Act is not maintainable and to continue the said proceedings against the petitioner would be abuse of process of law.

6. For the reasons stated above, the petition succeeds and the complaint No. 58/2004 - Inquiry Case No. 45/2005 subsequently numbered as Criminal Case No. 25780/2006 filed against the applicant for the offences under Section 138 read with Section 141 of the Act is set aside only qua the applicant, original-accused No.3. Rule is made absolute to the aforesaid extent.

[M.R. Shah, J.]

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